

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOSE SAPETA, et al.,

Plaintiffs,

v.

NISSAN-INFINITI LT, et al.,

Defendants.

Civ. Action No. 09-6160

OPINION & ORDER

Katharine S. Hayden, U.S.D.J.

This matter comes before the Court upon the Report and Recommendation (“R&R”) of Magistrate Judge Patty Shwartz [D.E. 18], filed on April 15, 2010, recommending that the complaint [D.E. 1] be dismissed. The matter came before Magistrate Judge Shwartz as a result of an April 1st order [D.E. 17] directing plaintiffs to show cause no later than April 14th why sanctions should not be imposed pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 37 and/or 41 for a lack of prosecution and for a violation of discovery obligations. The order further stated that if plaintiffs failed to respond by April 14th, then their non-responsiveness would be interpreted as consent to entry of an order dismissing the case. Magistrate Judge Shwartz directed plaintiffs’ counsel to provide a copy of the order to the plaintiffs. By way of letter (not on the docket) dated April 14th, plaintiffs’ counsel confirmed that he had made service, and further stated that he had attempted to communicate with plaintiffs by telephone and writing, but plaintiffs did not respond.

Having reviewed and considered the findings of Magistrate Judge Shwartz, the Court agrees that the complaint must be dismissed. In her oral opinion, Judge Shwartz stated: “[T]he record demonstrates non-compliance with the orders and the discovery obligations have been the fault of the plaintiffs themselves. Here, the plaintiffs have been provided adequate opportunity to respond to discovery and to respond to the overtures of their counsel” (T. 6:4-9.) She further found: “The plaintiffs’ failure to act on such warnings and failure to respond to their counsel and this Court’s order demonstrate that they have made a willful decision not to pursue this action.” (T. 6:19-22.) Based upon plaintiffs’ “willful abandonment” of the suit “by their lack of communication with their attorney, lack of responsiveness to this Court’s orders, and their lack of responses to the discovery demands and the prejudice to the defendants,” Judge Shwartz concluded “that dismissal is an appropriate and the only appropriate sanction.” (T. 7:4-8.)

Neither side has filed an objection, and the Court finds no clear error on the face of the record. Good cause appearing,

IT IS on this 22nd day of June, 2010 hereby

ORDERED that the complaint is dismissed; and it is further

ORDERED that the Report and Recommendation of Magistrate Judge Shwartz [D.E. 18] is adopted and incorporated as the opinion of this Court.

/s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.